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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/045,188

10/18/2001

Chia-Hsin Li

AP110HO

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11/14/2005

EPSON RESEARCH AND DEVELOPMENT INC
INTELLECTUAL PROPERTY DEPT
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EXAMINER

LESNIEWSKI, VICTOR D

ART UNIT

PAPER NUMBER

2152

DATE MAILED: 11/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/045,188

Applicant(s)

LI ET AL.

Examiner

Victor Lesniewski

Art Unit

2152

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 November 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

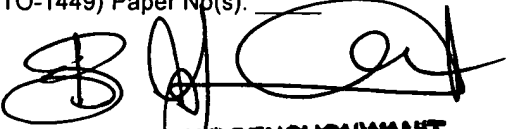
AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s).
13. ☐ Other: _____.

VL


BUNJOS JAROENCHONWANIT
PRIMARY EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: The applicant's arguments are not persuasive.

Although the applicant has set out several ways in which the present invention distinguishes itself from Spyker, it is still maintained that Spyker reads on the current claim language.

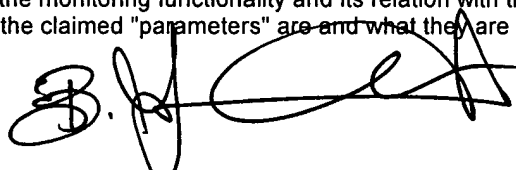
First it is noted that the applicant has misquoted the examiner in several instances in summarizing the telephone interviews from 10/26 and 10/31/2005. Most notably, the examiner does not believe the excerpt from Spyker concerning TCP/IP is "a self-contradictory statement." In fact, this statement is consistent with the remainder of Spyker's disclosure. However, the applicant is seemingly misinterpreting the reference. When Spyker states that "the present invention operates independently of the communication protocol used to send messages or files between the client and server," he means that it doesn't matter what communication protocol is used with the invention. A multitude of different communication protocols may be usable with the invention. This is significantly different than the applicant's interpretation that no communication protocol is used in the execution of the invention. In direct contrast to the applicant's assumption, Spyker sets forth exemplary embodiments of his invention throughout the remainder of his disclosure that utilize HTTP running on TCP/IP.

Concerning the point that "Spyker's 'dependencies' are bundled within a 'properties file' downloaded from a server to a client device for program installation, and are not individual parameters passed from a web browser to a server," it is maintained that these dependencies meet the limitations as claimed. "Individual parameters passed from a web browser to a server" is not a limitation of the claims. In fact, the claims do not state between which devices or in which direction the parameters are passed. The dependencies are considered "parameters of the application" in that they are dependent code needed to run a certain part of an application.

Concerning the point that "Spyker's 'dependencies' are used for setting up the appropriate run-time environment within the client device in preparation for launching the program," it is maintained that these dependencies meet the limitations as claimed. Spyker sets forth the embodiment in which dependencies not already installed are passed to the application after the application has already been launched. See Spyker, column 14, lines 42-67.

Thus claims 1-27 remain rejected as presented in the final action dated 8/3/2005.

It is recommended that the applicant amend the claims to more clearly describe the monitoring functionality and its relation with the running of the application in the present invention. A clearer delineation of what the claimed "parameters" are and what they are used for would also be helpful in distinguishing the claims over the prior art of record.



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